

BEFORE THE REAL ESTATE COMMISSION

AUG 26 2016

## STATE OF NEVADA

REAL ESTATE COMMISSION  
BY Richard A. [Signature]

SHARATH CHANDRA, Administrator,  
REAL ESTATE DIVISION, DEPARTMENT  
OF BUSINESS & INDUSTRY,  
STATE OF NEVADA,

Case No.: 2016-647

Petitioner,

vs.

MICHAEL (A.K.A. MIKE) CULLUM  
HARDING,

COMPLAINT AND NOTICE OF HEARING

RESPONDENT.

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Peter Keegan, Deputy Attorney General, hereby notifies RESPONDENT MICHAEL (A.K.A. MIKE) CULLUM HARDING ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapter 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if the RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.633 and/or NRS 645.630 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

JURISDICTION

RESPONDENT was at all relevant times mentioned in this Complaint licensed as a real estate salesperson, license number S.0169701, and is therefore subject to the jurisdiction of the Division and the provisions of NRS Chapter 645 and NAC Chapter 645.

FACTUAL ALLEGATIONS

1. RESPONDENT has been licensed as a real estate sales person, License Number S.0169701, since July 14, 2010, and is currently in active status.

2. RESPONDENT was associated with KRCH Realty, LLC ("KRCH") at the relevant times mentioned in this Complaint.

3. Kyle Krch ("Krch") has been licensed as a real estate broker, License Number B.0056206.LLC, since November 23, 2005, and was the broker for KRCH at the relevant times mentioned in this Complaint.

4. Jason A. Jairam ("Jairam") has been licensed as a real estate salesperson, License Number S.0170866, since August 16, 2011, and was associated with KRCH at the relevant times mentioned in this Complaint.

**WALL CANYON DRIVE**

5. On or about September 26, 2012, Geraldine Malone ("Malone") entered into an Exclusive Right to Sell Contract, which engaged Krch to list and sell real property located at 665 Wall Canyon Drive, Sun Valley, Nevada ("Wall Canyon").

6. On or about October 1, 2012, Shayla Gifford ("Gifford") signed an Offer and Acceptance Agreement for Wall Canyon.

7. RESPONDENT was Gifford's agent.

8. Gifford had a preexisting agreement with Krch and RESPONDENT to purchase short sale properties offered by KRCH for an investor group, ("the KRCH investor group"), in which Gifford, Krch, Sandra Krch, RESPONDENT, and Jeanette Hirschy ("Hirschy"), were principals.

9. On or about October 2, 2012, Malone presented a Counter Offer, which Gifford accepted.

10. On or about October 2, 2012, Krch signed and had Malone sign a Seller's Waiver of Multiple Listing Service ("MLS") Benefits.

11. Krch did not input Wall Canyon into the MLS until October 4, 2012, when he listed the property as pending new/pending short sale.

12. On or about October 8, 2012, Malone and Gifford executed a Short Sale Addendum to the Offer and Acceptance Agreement.

1           13. On or about October 9, 2012, Krch and RESPONDENT signed a Short Sale  
2 Real Estate Licensee Certification ("Licensee Certification"), as licensees representing their  
3 respective clients, for Bank of America.

4           14. In paragraph 3 of the Licensee Certification, RESPONDENT acknowledged and  
5 agreed that Wall Canyon has been listed on the MLS "at a listing price intended to generate  
6 open market competitive offers to purchase[.]" and that his or her "marketing efforts were in  
7 fact and 'in spirit' aimed toward maximizing the selling price of Property from a ready, willing  
8 and able buyer[.]" and that he "has not engaged in any conduct that restricts or limits offers  
9 from buyers . . . ."

10           15. In paragraph 5 of the Licensee Certification, RESPONDENT acknowledged and  
11 agreed that he was "not engaging in . . . "flipping . . . (whereby a recently acquired property is  
12 resold for a considerable profit with an artificially inflated value within a short period of time), . .  
13 . and/or straw buying." RESPONDENT further acknowledged and agreed that he had  
14 "disclosed all agreements or understandings relating to the current sale or subsequent sale of  
15 Property of which Licensee is aware of should be aware." Finally, in paragraph 5,  
16 RESPONDENT acknowledged and agreed that he was "not aware of any other agreements or  
17 understandings that call for the subsequent sale of the Property within 30 days of the current  
18 sale."

19           a. Despite these representations, RESPONDENT's client, Gifford, entered into an  
20 Exclusive Right to Sell Contract with Krch for the Wall Canyon property on  
21 January 12, 2013, with Hirschy listed as the owner and seller. As stated above,  
22 RESPONDENT, Gifford, Krch, and Hirschy were all principals in the KRCH  
23 investor group.

24           b. On January 13, 2013, an Offer was made by Gloria Deane Cutting to purchase  
25 the Wall Canyon property from Hirschy.

26           c. On January 14, 2013, a Counteroffer was made by Hirschy that was signed by  
27 Krch and accepted by the buyer, Gloria Dean Cutting.  
28

d. During the entire period of time which Krch marketed the Wall Canyon property for sale including the date on which the property entered into contract for sale by Hirschy, the Wall Canyon property remained titled to Gifford and was not transferred to Hirschy until January 31, 2013.

16. In paragraph 7 of the Licensee Certification, RESPONDENT acknowledged and agreed that "he or she has disclosed to Bank of America any known relationship to Buyer or ownership interest in Buyer's company, and Licensee representing Seller further acknowledges that he or she has no existing business relationship with Buyer and/or Seller other than the purchase of Property according to the terms and conditions of the purchase contract."

17. Finally, in paragraph 8 of the Licensee Certification, RESPONDENT acknowledged and agreed that "any misrepresentation or omission of a material fact may subject the responsible party to civil and/or criminal liability."

18. On or about October 10, 2012, Malone and Gifford executed a Short Sale Purchase Contract Addendum for Bank of America. However, the Short Sale Purchase Contract Addendum for Bank of America contains a hand written date of September 28, 2012.

19. In paragraph 8 of the Short Sale Purchase Contract Addendum, Gifford acknowledged and agreed that the "property cannot be sold or otherwise transferred within 30 days of closing."

20. In paragraph 11 of the Short Sale Purchase Contract Addendum, Malone and Gifford acknowledged and agreed "that any misrepresentation or deliberate omission of fact that would induce the Bank of America, Investor or a Mortgage Insurer to agree to the terms of a short payoff that would not have been approved had all facts been known, constitutes Short Sales Fraud and may subject the responsible Party to civil and/or criminal liability."

21. On or about December 28, 2012, Malone and Gifford signed a notarized Affidavit of Arm's Length Transaction, wherein they affirmed that "there are no hidden terms or special understandings between the seller or buyer or their agents or mortgagor(s)."

22. On or about that same day, the short sale transaction closed, and Gifford, a member of the KRCH investor group, received title to Wall Canyon.

23. RESPONDENT and Krch presented the Licensee Certification, Short Sale Purchase Contract Addendum, and Affidavit of Arm's Length Transaction to Bank of America.

24. RESPONDENT never disclosed Gifford's or his own relationship with the KRCH investor group to Bank of America during the Wall Canyon short sale transaction.

### VIOLATIONS

RESPONDENT has committed the following violations of law:

25. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by presenting the Wall Canyon Licensing Certification to Bank of America fraudulently misrepresented that the property was properly listed on the MLS to generate open market competitive offers.

26. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by presenting the Wall Canyon Licensing Certification to Bank of America while fraudulently misrepresented the fact that he had an existing business relationship with the prearranged Buyer, Gifford.

27. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by presenting the Real Estate License Certification to Bank of America while fraudulently misrepresenting the fact that the intention and objective of the KRCH investor group was to "flip" the Wall Canyon Property after obtaining it through the KRCH investor group's straw buyer, Shayla Gifford, for an inflated value within a short time.

28. RESPONDENT violated NRS 645.633(1)(i) pursuant to NAC 645.605(1), by presenting the Wall Canyon Affidavit of Arm's Length Transaction to Bank of America while fraudulently misrepresenting the fact that there was a prearranged buyer for that property.

### DISCIPLINE AUTHORIZED

29. Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an administrative fine of up to \$10,000 per violation against RESPONDENT and further to suspend, revoke or place conditions on the license of RESPONDENT.

31. Therefore, the Division requests that the Commission take such disciplinary action as it deems appropriate under the circumstances.

## NOTICE OF HEARING

**PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider the Administrative Complaint against the above-named RESPONDENT in accordance with Chapters 233B and 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

**THE HEARING WILL TAKE PLACE on October 5, 2016, commencing at 1:00 p.m., or as soon thereafter as the Commission is able to hear the matter, and each day thereafter commencing at 9:00 a.m. through October 7, 2016, or earlier if the business of the Commission is concluded. The Commission meeting will be held on October 5, 2016, at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701. The meeting will continue on October 6, 2016 at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701, commencing at 9:00 a.m., and on October 7, 2016, should business not be concluded, starting at 9:00 a.m. at the Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada 89701.**

**STACKED CALENDAR:** Your hearing is one of several hearings scheduled at the same time as part of a regular meeting of the Commission that is expected to last from October 5 through October 7, 2016, or earlier if the business of the Commission is concluded. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as if all allegations in the Complaint were true. If you

1 have any questions please call Rebecca Hardin, Commission Coordinator (702) 486-  
2 4074.

3 YOUR RIGHTS AT THE HEARING: except as mentioned below, the hearing is an  
4 open meeting under Nevada's open meeting law, and may be attended by the public. After  
5 the evidence and arguments, the Commission may conduct a closed meeting to discuss your  
6 alleged misconduct or professional competence. A verbatim record will be made by a certified  
7 court reporter. You are entitled to a copy of the transcript of the open and closed portions of  
8 the meeting, although you must pay for the transcription.

9 As the RESPONDENT, you are specifically informed that you have the right to appear  
10 and be heard in your defense, either personally or through your counsel of choice. At the  
11 hearing, the Division has the burden of proving the allegations in the Complaint and will call  
12 witnesses and present evidence against you. You have the right to respond and to present  
13 relevant evidence and argument on all issues involved. You have the right to call and  
14 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter  
15 relevant to the issues involved.

16 You have the right to request that the Commission issue subpoenas to compel  
17 witnesses to testify and/or evidence to be offered on your behalf. In making the request, you  
18 may be required to demonstrate the relevance of the witness' testimony and/or evidence.  
19 Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter  
20 233B, and NAC 645.810 through 645.920.

21 The purpose of the hearing is to determine if the RESPONDENT has violated NRS 645  
22 and/or NAC 645 and if the allegations contained herein are substantially proven by the  
23 evidence presented and to further determine what administrative penalty, if any, is to be

24 ////

25 ////

26 ////

27 ////

28 ////

1 assessed against the RESPONDENT, pursuant to NRS 645.235, 645.633 and/or 645.630.


2 DATED this 25<sup>th</sup> day of August, 2016.

3 State of Nevada  
4 Department of Business and Industry  
5 Real Estate Division

6 By:   
7 SHARATH CHANDRA, Administrator  
8 2501 East Sahara Avenue  
9 Las Vegas, Nevada 89104-4137  
10 (702) 486-4033

11 DATED this 22<sup>nd</sup> day of August, 2016.

12 ADAM PAUL LAXALT  
13 Attorney General

14 By:   
15 PETER KEEGAN  
16 Deputy Attorney General  
17 100 North Carson Street  
18 Carson City, Nevada 89701  
19 (775) 684-1153  
20 Attorneys for Real Estate Division  
21  
22  
23  
24  
25  
26  
27  
28